

Decision 01-08-064 August 23, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC
COMPANY For a Certificate of Public
Convenience and Necessity Authorizing The
Construction of the Northeast San Jose
Transmission Reinforcement Project.

Application 99-09-029
(Filed September 9, 1999)

OPINION STAYING DECISION 01-05-059

Summary

This decision stays Commission Decision (D.) 01-05-059 pending further proceedings on the cost of the project we approved therein. In D.01-05-059, we granted the application of Pacific Gas and Electric Company (PG&E) for a certificate of public convenience and necessity (CPCN) to build a new 7.3 mile 230 kilovolt (kV) transmission line, upgrade certain other transmission facilities, and construct a transmission/distribution substation to serve the Northeast San Jose area. Because the transmission line route we approved differed from that PG&E proposed, we ordered PG&E to submit updated cost information for the version of the project we selected, and took comments on the new cost information.

Those comments, as well as the cost information itself, make clear that further proceedings on the cost of the project are required. The new cost estimate exceeds by more than \$100 million the original estimate PG&E

furnished for the project. While PG&E's cost estimates for the original route, and variations on it, were in the \$77 million - \$104 million range,¹ the new estimate is \$182 million. The route PG&E supported at the time we issued D.01-05-059 was estimated at \$83.5 million.² As the commenters point out,³ many of the costs are unexplained, and the sheer magnitude of the cost increases dictates that we take further evidence on the new information.

We note that the Office of Ratepayer Advocates (ORA) at one time sought, and was denied, leave to hire a consultant to review PG&E's original cost information on the ground the project costs would exceed \$100 million.⁴ At the time, the estimates were well below that figure. Because they now exceed \$100 million, ORA may, at its discretion, hire a consultant at PG&E's expense to

¹ PG&E presented the following cost estimates for various route configurations:

PG&E Cost Estimate	Route
\$77.3 million	PG&E's original preferred route
\$83.5 million	PG&E's new preferred route (Modified I-880-A/Proposed Route)
\$84.6 million	I-880-A route
\$85.1 million	Westerly Alternative
\$87.4 million	Underground Through Business Park route
\$103 million	Northern Receiving Station route
\$104 million	I-880-B route

D.01-05-059, *mimeo.*, at 28-29.

² *Id.* at 24 n.50.

³ D.01-05-059 granted intervenors the right to comment on the new cost information within 15 days of its submission.

⁴ *Assigned Commissioner's Ruling on Motion of the Office Of Ratepayer Advocates for Reimbursement Pursuant to Public Utilities Code Section 631 and Ruling Directing PG&E to Amend its Application*, dated Jan. 4, 2000.

review PG&E's new cost information pursuant to Pub. Util. Code § 631.⁵ Indeed, at the time the assigned Commissioner denied ORA's request for reimbursement, he stated "If the amended application indicates a cost over \$100 million, ORA may refile for reimbursement under § 631."⁶ To expedite the process, we will not require ORA to refile its request, given that the current cost estimate so clearly exceeds \$100 million.

There are several pending applications for rehearing of D.01-05-059.⁷ This decision does not dispose of or prejudge those applications.

Background

PG&E filed its application in September 1999. The Commission evaluated the project for its environmental impact, and also evaluated the need for and costs of the project. In D.01-05-059, the Commission approved the transmission

⁵ Pub. Util. Code § 631 provides:

[T]he Commission shall require every electrical corporation and every gas corporation proposing to construct or modify any electric plant or gas plant at a cost in excess of one hundred million dollars (\$100,000,000) to reimburse the commission for expenses of such consultants or advisory services as the commission deems necessary for either or both of the following:

- (a) The processing of an application for certification of the plant.
- (b) The processing of an application for approval of any rate increase reflecting the inclusion of the cost of the plant in the rates of the corporation. This subdivision applies to any plant for which the costs of construction or modification are approved for inclusion in the corporation's rates on or after January 1, 1983.

⁶ *Assigned Commissioner's Ruling on Motion of the Office of Ratepayer Advocates for Reimbursement Pursuant to Public Utilities Code Section 631 and Ruling Directing PG&E to Amend its Application*, dated Jan. 4, 2000.

⁷ *Application [of Joseph A. McCarthy et al.] for Rehearing of Decision 01-05-059*, filed June 18, 2001; *Application of Pacific Gas and Electric Company for Rehearing of Decision 01-05-059*, filed June 18, 2001; *Application for Rehearing of Decision 01-05-059 of ProLogis Limited Partnership-I and ProLogis Trust* (ProLogis), filed June 18, 2001.

line route that its Environmental Impact Report (EIR) found to be the environmentally superior route, and certified the EIR. It also found there was a need for the project based on projected electricity demands in the Silicon Valley area the project covered. However, because PG&E's cost information was not based on the chosen route, and otherwise was insufficient to set the project's cost cap,⁸ the Commission ordered PG&E to submit updated cost information reflecting the route and substation location the Commission had selected.

PG&E submitted its new information on June 18, 2001.⁹ The cost information revealed substantial cost increases even for portions of the project that were – or should have been – reflected in the original estimates. For example, D.01-05-059 approved PG&E's choice of substation and 115kV transmission lines. Nonetheless, costs for these aspects of the project reflected substantial increases. While these increases may be explained by simple inflation, they are unexplained in PG&E's cost submission.

Several commenters pointed out some of the changes in the cost information that require further inquiry. For example, Aglet Consumer Alliance noted in its comments that,

⁸ Pub. Util. Code § 1005.5 provides that “whenever the commission issues to an electrical . . . corporation a certificate authorizing the new construction of any addition to or extension of the corporation's plant estimated to cost greater than fifty million dollars (\$50,000,000), the commission shall specify in the certificate a maximum cost determined to be reasonable and prudent for the facility.”

⁹ *Advice Letter and Supplemental Testimony (Cost Estimate) of Pacific Gas and Electric Company Responding to Ordering Paragraph 4 of Decision 01-05-059*, filed June 18, 2001. PG&E submitted some of its cost information under seal. The assigned Administrative Law Judge instructed PG&E by email to execute confidentiality agreements with the interested parties so that they might have access to the sealed information and comment meaningfully on PG&E's cost information. Once PG&E afforded such access, the interested parties had 15 days to comment on the cost information.

PG&E's cost estimates are substantially higher for portions of the Project that should not have changed. For example, PG&E's estimate for "CPCN support" has risen from \$1.2 million . . . to \$5.4 million PG&E's estimate for "115kV Transmission Line" has risen from \$3.9 million . . . to \$6.6 million. . . .

PG&E's dramatically higher total cost estimate undermines the purpose of Public Utilities Code § 1005.5, which is to protect ratepayers against the consequences of runaway costs for large scale utility construction projects. . . . Therefore, the Commission should consider convening additional hearings on the new cost estimate, to test PG&E's numbers thoroughly in light of the finding that PG&E's original cost showing was inadequate.¹⁰

Other commenters claim PG&E's revised land costs are still too *low* to accurately reflect market conditions.¹¹ ORA states that conditions have changed since PG&E first submitted its cost estimates, mandating further consideration of the need for the project:

ORA is concerned that new cost [sic] of this project is vastly more expensive than the cost that the Commission considered in arriving at D.01-05-059. Yet the benefits of this project have not apparently increased. In addition, circumstances have changed since the Commission's consideration of the need for this project, most notably, the city of San Jose's reversal of its opposition to, and now support for, the Metcalf Energy Center that will provide similar benefits to this transmission project at no direct cost to ratepayers. Construction of the Metcalf Energy Center will reduce the incremental value of PG&E's proposed project.¹²

¹⁰ *Comments of Aglet Consumer Alliance on Cost Estimate*, filed July 16, 2001, at 2.

¹¹ *Comments of [ProLogis] Regarding Pacific Gas and Electric Company's Supplemental Cost Estimates*, filed July 16, 2001, at 1; *Comments of Calpine C*Power on the Cost-Estimate of Pacific Gas and Electric Company*, filed July 16, 2001.

¹² *Comments of the Office of Ratepayer Advocates on Pacific Gas and Electric Company's Supplemental Testimony*, filed July 16, 2001, at 4.

Discussion

The magnitude of the cost increases requires further proceedings to test PG&E's new estimates. The new costs are unexplained in many places, and as the commenters pointed out, reflect increases in aspects of the project that did not change. Therefore, the assigned ALJ will issue a ruling scheduling hearings on the new cost information, and requesting briefing and other submissions on the specifics of that information. The hearings will occur expeditiously so to avoid undue delay of the project.

It may be that scrutiny of the new cost information leads us to select a different route. We do not decide that issue at this time, but wish to make clear that it is a possibility to be considered at the hearings. We expect parties challenging the costs to present concrete and affirmative evidence that the costs are inaccurate. They should also advocate specific Commission action if they claim the Commission should alter any of its conclusions in D.01-05-059. We do not intend the hearings to address the environmental impacts of any of the alternatives discussed in the EIR, however, and parties should refrain from attempting to relitigate those issues.

Comments on Draft Decision of the ALJ

Section 311(g)(1) of the Public Utilities Code provides that this decision must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Pursuant to Pub. Util. Code § 311(g)(2) and § 311(g)(3), and Commission Rule 81(h), we reduce the 30-day period for comment on this draft decision due to an unforeseen emergency situation and to public necessity. The magnitude of PG&E's cost changes were not known to the Commission until PG&E submitted its cost information on June 18, 2001. The commenters did not make their concerns known until July 16, 2001, and PG&E will not submit its reply to those comments until July 25, 2001.

Moreover, the record of the need for the new facilities reflects that the current transmission capacity will be insufficient to meet demand as early as summer 2002, and it will take PG&E some time to build the project. For all of these reasons, and the reasons set forth elsewhere in this decision, a stay is justified in the public interest with the shortened period for comments. Comments shall be served by noon Pacific Time on August 20, 2001, but may be filed at any time up until 5:00 p.m. that day. No reply comments will be allowed.

The following parties filed comments: PG&E, the Independent System Operator (ISO), City of Santa Clara/Silicon Valley Power (Santa Clara), City of Milpitas (Milpitas), and Joseph A. McCarthy *et al.*

Several parties (PG&E, Santa Clara, and the ISO) question whether a stay is needed at all, given that the assigned ALJ is proceeding with hearings on the cost of the project without a stay. While a stay may not be an absolute requirement to continued consideration of the project's cost, we wish to make clear to all concerned that the project should not proceed until completion of the next round of hearings and further Commission action. In our view, a stay makes this clear for all the world. Thus, we reject the argument that a stay is unnecessary.

We agree, however, that a stay is not needed to authorize further hearings. We have authority to hold such hearings in view of the following language from D.01-05-059:

Ordering Paragraph 4. PG&E shall perform a detailed cost estimate of the environmentally superior route we select in this decision. It shall complete and file by Advice Letter the estimate no later than 30 days from the date this decision is mailed. No later than 15 days from the date PG&E submits the cost estimate, other parties to this proceeding may file comments on PG&E's proposed estimate. This order shall become effective once the Commission reviews the cost data

and comments thereon and incorporates a cost cap *and any other necessary changes into this decision.* (Emphasis added.)

Other parties (McCarthy and Milpitas) advocate that the Commission reexamine the environmental impact of alternate routes. We have already fully studied such impacts in the EIR, and need not do so again, even if we choose an alternate route due to cost considerations.

Others (PG&E, Santa Clara, and the ISO) challenge the scope of the further hearings the ALJ plans to the extent the hearings will examine the need for the project. However, if, due to changed circumstances, the project is no longer needed, it behooves us to find this out. Because D.01-05-059 authorized us to insert not only a finding on the cost of the project but also to incorporate “other necessary changes to this decision,” we have the discretion to examine need. Moreover, we note that the ALJ’s Scoping Memo for the continued hearings limits consideration of need to facts that were not included, and could not with reasonable diligence have been included, in the record of the prior hearing. Thus, there is no merit to the ISO’s claim that this decision will result in a “full scale relitigation of a broad range of issues. . . .”

Finally, the ISO’s claim that this decision will cause outages in Silicon Valley is contradicted by PG&E’s comments. While the ISO states the project must be on line by summer 2002, PG&E has revised its estimate to “summer 2003 considered by the ISO to begin on May 1, 2003.”¹³ Assuming the new evidence bears out the claim that the project is still needed, we will do everything feasible to ensure we do not delay needed upgrades to the Silicon Valley electric infrastructure.

We make no changes to the Draft Decision based on the parties’ comments.

Findings of Fact

1. PG&E's original cost estimates for various project alternatives ranged from approximately \$77 million - \$104 million. The alternative PG&E advocated at the time we rendered D.01-05-059 was \$83.5 million.

2. PG&E's cost estimate for the project alternative the Commission selected exceeds \$182 million.

3. PG&E's cost estimates for aspects of the project that did not change from PG&E's original request showed material increases not adequately explained by PG&E's filings. These increases are unexplained.

4. There are several other aspects of PG&E's cost information that require further scrutiny and clarification.

Conclusions of Law

1. The Commission has authority to cap project costs pursuant to Pub. Util. Code § 1005.5.

2. The public interest requires further examination of the nature of PG&E's cost estimates.

O R D E R

IT IS ORDERED that:

1. Commission Decision 01-05-059 is stayed pending further proceedings on the cost of the project approved therein.

2. Pursuant to Pub. Util. Code § 631, the Commission's Office of Ratepayer Advocates may, at its discretion, hire a consultant to review Pacific Gas and

¹³ *Comments of PG&E on August 8, 2001 Draft Opinion Staying Decision 01-05-059*, at 4.

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Electric Company's (PG&E) new cost information and seek reimbursement from PG&E for the cost of the consultant.

This order is effective today.

Dated August 23, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners